

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**2900 Crystal Drive**  
**Arlington, Virginia 22202-3513**

Mailed: April 3, 2003

Cancellation No. 31,904

Bell, Inc.

v.

Bell Packaging Corp.

Karen Kuhlke, Interlocutory Attorney:

This case now comes up for consideration of respondent's contested motion, filed on December 12, 2002, to quash a notice of deposition, to strike trial testimony, to request an oral deposition and to attend a deposition by telephone.

By way of background, petitioner's testimony period was last set to close on December 15, 2002. On November 22, 2002, by certificate of mailing, petitioner filed and served its notice of testimonial deposition upon written questions of Mark Graham, petitioner's president, under Trademark Rule 2.124(b). The notice indicated that petitioner would take the testimonial deposition on December 2, 2002. The notice included a copy of the questions to be asked but not the documents to be identified and marked as exhibits. On December 12, 2002, by express mailing, respondent filed its

motion in opposition to the deposition and on December 26, 2002 petitioner filed the testimonial deposition of Mark Graham taken on December 2, 2002.

The procedure for taking a deposition upon written questions is clearly set forth in Trademark Rule 2.124. This provision allows the adverse party twenty days from the date of service of the notice to serve cross questions. Trademark Rule 2.124(d). It further allows for objections, redirect and recross questions to be served. *Id.* Thereafter, within ten days from the last date when questions, objections, or substitute questions may be served, the party who proposes to take the deposition shall mail a copy of the notice and copies of all the questions to the officer designated in the notice and the officer designated in the notice shall take the testimony of the witness.<sup>1</sup> Trademark Rule 2.124(e).

Trademark Rule 2.123 provides that if a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is in the United States, the adverse party may within fifteen days (twenty in total if the service is done by first class mail) file a motion to have the deposition taken by oral examination.

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<sup>1</sup> In other words, all questions are accumulated and then the deposition is taken. See TBMP Section 714.05 (adverse party may attend the taking of the deposition but not participate, participation occurred previously through its service of cross questions).

By setting a date and taking the deposition prior to the expiration of time for respondent to either serve its cross questions and/or move for an oral examination, petitioner's notice and testimony are not in compliance with Trademark Rules 2.123 and 2.124. In view thereof, respondent's motion to quash the November 25, 2002 notice of deposition and to strike petitioner's trial testimony is granted. Accordingly, petitioner's testimonial deposition of Mark Graham, filed on December 26, 2002, is hereby stricken.

In view of the above, respondent's motion to request a deposition by oral examination and to attend by telephone is moot. However, the Board notes that petitioner's witness, Mark Graham, is petitioner's president and would be testifying to substantive issues going to the heart of the case. Therefore, the request for an oral examination would be looked upon favorably. Moreover, the cumbersome and time consuming procedure associated with depositions upon written questions may, in the end, work more of a hardship for petitioner than an oral deposition conducted over the telephone. The Board is confident that the parties can come to a reasonable arrangement.

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Proceedings are considered to have been suspended as of November 22, 2002, the filing of the notice of deposition upon written questions.<sup>2</sup> Trademark Rule 2.124(d)(2).

Trial dates are reset as indicated below.

**DISCOVERY PERIOD TO CLOSE:**

**closed**

30-day testimony period for party in position of plaintiff  
to close:

**May 16, 2002**

30-day testimony period for party in position of defendant  
to close:

**July 15, 2002**

15-day rebuttal testimony period to close:

**August 29, 2002**

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<sup>2</sup> Respondent's motion (filed February 7, 2002) to suspend and reset dates is granted to the extent indicated above.